

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 14-20034

ERRIC DEVOHN WATKINS,

Defendant.

ORDER STRIKING DEFENDANT'S EXHIBIT

Now before the court is Defendant Erric Devhon Watkins' Motion for Reconsideration (Dkt. # 51) which requests that the court reconsider its denial of three motions to suppress filed by Watkins. (Dkt. # 40.) For the reasons stated below, the court will strike Exhibit 2 of the motion from the docket.

On March 4, 2015, one day before his current counsel was appointed, Watkins mailed to the court a pro se motion for reconsideration. The mailing was not docketed. (Dkt. # 45-1.) In a later motion filed by his counsel, Watkins requested that the court accept the pro se motion as timely and permit Watkins, through his counsel, to supplement the pro se motion. (Dkt. # 45, Pg. ID 270.) In its May 18, 2015 order, the court denied the motion and granted Watkins permission to file the instant Motion for Reconsideration, stating, "In the interests of justice and judicial economy, the court will permit Watkins' counsel to file *one* motion for reconsideration of the court's February 22, 2015 Opinion and Order Denying Motions to Suppress Evidence, in lieu of deeming

Watkins' pro se motion as timely or permitting the filing of a supplemental brief." (Dkt. # 49, Pg. ID 433 (emphasis added).)

Watkins' instant motion, filed by his counsel, attaches a "Pro Se Memorandum in Support Motion for Reconsideration of Evidentiary Hearing to Suppress Evidence Seized During Warrantless Search prepared by Erric Watkins." (Dkt. # 51-2, Pg. ID 457-64.) The Motion describes the purpose of the exhibit: "In consultation with the Defendant, Counsel has been advised that Mr. Watkins wishes to modify his earlier Ting, styled as Motion for Reconsideration. Counsel has obliged the Defendant by proving clerical assistance to recognize the 'pleading.'" (Dkt. # 51.) The filing of this supplemental pro se memorandum is inconsistent with the court's grant of permission to Watkins to file *one* motion for reconsideration.

Moreover, Watkins is not entitled to represent himself while simultaneously represented by counsel. A criminal defendant has the right to appear *pro se* or by counsel, a right protected both by the Sixth Amendment to the United States Constitution and by federal statute. See 28 U.S.C. § 1654 ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel . . ."). This right, however, is disjunctive, thus a party may choose *either* to represent himself or to appear through an attorney. There is no right to "hybrid" representation that would result in simultaneous or alternating self-representation and representation by counsel. As the Sixth Circuit has stated:

The right to defend pro se and the right to counsel have been aptly described as "two faces of the same coin," in that waiver of one right constitutes a correlative assertion of the other. While it may be within the discretion of a District Court to permit both a criminal defendant and his attorney to conduct different phases of the defense in a criminal trial, for purposes of determining

whether there has been a deprivation of constitutional rights a criminal defendant cannot logically waive or assert both rights.

United States v. Mosely, 810 F.2d 93, 97 (6th Cir. 198) (quoting *United States v. Condor*, 423 F.2d 904, 908 (6th Cir. 1970)). A person represented by counsel must rely upon that counsel. See, e.g., *United States v. Toufaili*, No. 10-cr-20705, 2011 WL 318125, at *2 (E.D. Mich. Jan. 31, 2011) (compiling cases). In light of the case law and the court's May 18, 2015 order, the court will strike the supplemental pro se memorandum. Accordingly,

IT IS ORDERED that Defendant Erric Watkins' Exhibit 2 to Defendant's Motion for Reconsideration (Dkt. # 51-2) is hereby STRICKEN from the docket of this court.

s/ Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: August 14, 2015

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, August 14, 2015, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522